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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: CC Docket No. 94-54
WRITTEN EX PARTE PRESENTATION

RECEIVED

OCT 19 1995

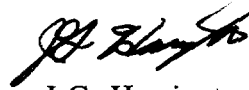
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

On behalf of our client Cox Enterprises, Inc. ("Cox"), I am submitting certain materials prepared by Cox that may be of interest to the Commission in connection with the above-referenced proceeding. By copy of this letter, those materials also are being provided to Patrick Donovan of the Common Carrier Bureau staff.

In accordance with the requirements Section 1.1206(a) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office.

Respectfully submitted,



J.G. Harrington

JGH/taf

cc: Patrick Donovan (by hand)

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COX ENTERPRISES, INC.
RESPONSES TO LEC ARGUMENT AGAINST “BILL AND KEEP”

Argument: “Bill and keep” arrangements are based on the erroneous assumption that the costs of terminating traffic are the same as the costs of originating it, when in fact the costs of terminating traffic are higher.

Response: The LECs have not produced any cost data to prove this assertion, and if anything, the opposite is true -- originating traffic is more expensive than terminating it at the last switch of the connecting network. This argument seems to be based on the erroneous assumption that the terminating carrier will route the call through most of its network, and the originating carrier will transfer the call to the terminating carrier at the tandem (or higher). However, Cox is asking only that “bill and keep” be used for traffic terminated at the end office, where the cost of termination is de minimis (on average, about \$.002 per minute).

Argument: “Bill and keep” mistakenly assumes that the costs of termination are equal between networks and that traffic flows between networks will be in balance, thus causing the costs and charges between carriers to cancel each other out.

Response: Studies using the LECs’ own data demonstrate that the average costs of terminating traffic on incumbents’ networks are de minimis. It thus would not matter should the costs of terminating traffic on a new entrant’s network turn out to be smaller. Moreover, from a theoretical perspective, prices in a purely competitive market would be uniform and would be set by supply and demand, not by an individual supplier’s costs. Therefore, the price for interconnection should not vary simply because one supplier is less efficient than another. The LECs themselves have long argued for regulation in which prices are de-coupled from costs. Their insistence that differences in termination costs among networks should be reflected in rates for terminating traffic is a throwback to 1960s-style rate-of-return regulation.

The fact that the average incremental cost of terminating traffic is so tiny also makes it irrelevant that traffic flows might be imbalanced at the outset of competition. “Bill and keep” is an efficient economic solution where either: (1) traffic flows are roughly balanced or (2) the cost of terminating traffic is low in relation to the transaction costs of measuring and charging for traffic. With termination costs averaging \$.002 per minute, it would be cheaper to use “bill and keep” than it would be to develop methods of counting and billing for traffic.

Finally, “bill and keep” eliminates inefficient marketplace incentives. The higher the interconnection charge, the more competitive carriers will be forced to distort their marketing in the direction of customers (such as Pizza Hut) who make very few calls and who receive many calls. This will occur because competitive carriers will derive greater

profit from terminating calls than from originating them. "Bill and keep" prevents this market distortion from occurring.

Argument: "Bill and keep" ignores the type and scope of facilities required to terminate calls and the resulting costs of providing the service. Incumbents should not bear the entire cost of maintaining the ubiquitous network, which would happen under "bill and keep."

Response: Since "bill and keep" would be used for calls terminated at the incumbent LEC's end office, a competitive carrier would use only a small portion of the incumbent's network. The incremental costs of such interconnection are minuscule and are outweighed by the costs of measuring and charging for traffic. Moreover, incumbent LECs would be compensated at cost for calls terminated at the tandem. Accordingly, the argument that "bill and keep" will impose a serious cost burden on incumbent LECs is simply erroneous.

Moreover, the LECs already are recovering the costs of the "ubiquitous network" through existing rate structures. To the extent that incumbents really are arguing that they should be allowed to charge above-cost interconnection rates in order to stave off (or be "compensated for") losses caused by competition, that argument directly contravenes the public interest. Policymakers across the country agree that competition in the local loop benefits consumers. Allowing incumbent LECs to add a surcharge to termination charges could suffocate, and would certainly be counterproductive to, competition in the local loop.

In addition, federal and state regulators already are easing regulation of monopoly LECs to ease their adjustment to a competitive environment. For example, the FCC just adopted a notice proposing relaxation of its price cap regime to help incumbent LECs better respond to competition. Many states are moving from cost-of-service to price cap regulation, and some states are even granting price flexibility before demonstrable competition exists. These proceedings are the proper place to address LEC arguments about the "harms" introduced by competition.

Argument: Universal service will be seriously undermined by the introduction of competition into the local loop. Interconnection charges for terminating traffic thus should include a surcharge to prevent erosion of universal service.

Response: Consumers with limited incomes should have access to reasonably priced basic local exchange service, as should those who live in high-cost areas. The development of competition will spur all LECs to lower costs and expand their customer base, thereby reducing the need for universal service assistance to such subscribers over time. In the interim, however, the way to ensure that universal service continues is to address the need for, and establishment of, a universal service fund in a separate proceeding -- not to include a universal service surcharge in LEC rates for terminating traffic.

Argument: “Bill and keep” will irreparably injure incumbent LECs by causing “dumping”, in which a competitive carrier sends all of its traffic to the incumbent for termination as “local calling,” even though the traffic includes large volumes of calls that are not local. Specifically, competing LECs could lure IXCs (and their access revenue) away from incumbents LECs by reselling the free termination service received from the incumbent to the IXCs or offering them discounted access rates.

Response: Assuming this scenario were to occur, consumers would benefit because the reduced access charges would result in lower long distance rates. However, should regulators become concerned that lower access rates are having an adverse effect on the provision of local exchange service, that issue should be addressed through universal service or access charge reform, not through the imposition of an unrelated and anticompetitive surcharge in the rates for terminating traffic on the local exchange.

Argument: Because it allows competitors to use incumbent LECs’ networks without compensation, “bill and keep” is an unconstitutional taking that violates incumbents’ Fifth Amendment rights.

Response: Courts can be expected to consider three factors in assessing whether a government-imposed “bill and keep” arrangement for traffic terminated at the end office constitutes a regulatory taking: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The third element refers to whether there has been a physical taking -- i.e., a physical invasion of LEC property -- which is not at issue here. The first factor, the economic impact of the regulation, generally requires that the property be rendered worthless, or virtually worthless, as a result of the government’s action. Should “bill and keep” be adopted, however, the LECs can continue to provide all of the services they currently provide and their termination of traffic for interconnecting LECs will have no effect on other uses of their facilities. Incumbent LECs also will receive the further economic benefit of being able to terminate their traffic on competing networks at no cost. As for the second element, interference with investment-backed expectations, the courts are clear that the mere loss of anticipated profits does not constitute a taking. Accordingly, “bill and keep” would not deprive the incumbent LECs of their property in violation of the Fifth Amendment under the relevant caselaw.

Moreover, as a practical matter, studies using the LECs’ own data reveal that the transaction costs of measuring and charging for terminating traffic at the end office are probably higher than the de minimis cost of terminating the traffic. Thus, using “bill and keep” for end office traffic termination is fair to incumbent LECs and produces an economically efficient result.

Argument: “Bill and keep” would require revision of incumbent billing systems which are already in place to handle access charges. There is a high likelihood that new entrants will hand off local traffic to the incumbent to be terminated in a third carrier’s territory.

“Bill and keep” cannot work under this scenario because the middle carrier would not be in a position to bill the end user placing a call, and would end up performing a service without any form of compensation.

Response: This argument again assumes that “bill and keep” would be applied for all types of interconnection, when in fact Cox is asking that it be adopted for terminations that occur at the end office. In the scenario posited by the LECs, the middle carrier would be compensated by the originating carrier for the transport services it supplied.

STATE BY STATE STATUS OF COMPENSATION AND INTERCONNECTION

ARIZONA

Workshops on compensation and technical interconnection are underway. The workshops should lead to a formal proceeding to adopt rules by year end.

CALIFORNIA

In California new entrants will use bill and keep for the first year (through 12/31/96). Longer term arrangements will be developed through proceedings held for that purpose. The compensation issue has not been set for hearing at present. A hearing is underway on non-compensation (technical interconnection) issues. Hearings should begin shortly.

CONNECTICUT

The Connecticut Department of Public Utility Control (DPU) held hearings in May 1995 on interconnection and reciprocal compensation. See DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network, Docket No. 94-10-02. The Connecticut DPUC recently released its final decision on interconnection and reciprocal compensation.

With respect to reciprocal compensation, for an eighteen month period from the date of the decision, Competitive Local Exchange Carriers (CLECs) can enter the market and operate on a reciprocal bill and keep basis with SNET for 9 months. Whether all traffic -- local and toll -- can be exchanged with SNET on this bill and keep basis is unclear, and parties are expected to seek clarification from the DPUC. After six months of bill and keep, the CLEC and SNET will measure traffic for three months to determine if traffic is in balance or not. If it is balanced, then the carriers will stay on a bill and keep arrangement for another twelve months. If traffic is unbalanced, then the carriers are to "true up" the past imbalance and on a going forward basis, choose either a minutes of use compensation plan or a flat-rate port compensation plan for the exchange of all intraLATA traffic (both local and toll; on this the DPUC is much more clear).

The DPUC also approved a stipulation regarding directory listings and unbundled loops. SNET will list CLEC customers in its published and electronic directories free of charge. SNET will also distribute directories to CLEC customers and provide CLECs with a reasonable bulk shipment of directories for our own distribution. The stipulation also defined loop and port elements and administrative processes and procedures for ordering service.

CONNECTICUT (continued)

The DPUC ordered carriers to interconnect at established tandem and end offices or other mutually agreed meet points. The carriers are also expected to interconnect via two-way trunk groups unless it is mutually agreed to operate with one-way trunk groups.

Other than making local loops available for resale, the DPUC refused to require SNET to make all of its services available for resale. Instead, the DPUC pushed the issue of resale to another proceeding (Docket 95-06-17).

With respect to NXX Code Administration, the DPUC required all carriers to absorb their own costs of programming their switches to load new NXXs, which is consistent with how the industry has always functioned and represents a repudiation of SNET's effort to force its competitors to subsidize its costs of operating. This eliminates much of the \$5,000 per NXX charge SNET sought to impose on CLECs. SNET was authorized to share its administrative costs of assigning NXX codes, but the DPUC said SNET was only permitted to recover their costs from the date of this decision. The DPUC also stated its intent to assume responsibility for NXX assignments in the future. How and when the DPUC assumes this responsibility remains to be seen. SNET was also ordered to make available inter-carrier remote call forwarding, but no price was established. The DPUC did, however, order that all access charges associated with a ported number belong to the forwarded CLEC, an important principle.

As a final matter, it should be noted that the DPUC is conducting another proceeding (Docket 94-10-05) which is addressing affiliate relations and transactions. In this docket, the DPUC is examining its rules in light of the competitive marketplace.

FLORIDA

The new Florida legislation, which for the first time allows local competition, mandated that carriers are to negotiate compensation issues within sixty days of the date on which they seek LEC status. Some CLEC's sixty day negotiation periods have already ended. It is believed that no CLEC was able to negotiate any interconnection arrangements with BellSouth during this initial negotiation period. On September 1, TCG filed a Petition with the Commission (Case No. 950985-TP) asking it to establish a compensation rate. The Commission has set hearings on interconnection matters beginning October 23.

ILLINOIS

On April 7, 1995 the Illinois Commerce Commission ("ICC") promulgated interim mutual compensation rates for call terminations. The interim rate for Tandem Switched Termination is \$.0075 per minute of use while the End Office Switched Termination is \$.005 per minute of use. See, Illinois Bell Telephone Company, Proposed Introduction of a trial of Ameritech's Customers First Plan in Illinois, ICC Docket Nos. 94-0096, 94-0117, 94-0146, and 94-0301 at pp. 85, 98. These rates do not include any volume or time of day discounts.

The ICC has stated its intention to open a docket to set permanent mutual compensation rates, but as of this time no such docket has been initiated. Many parties are lobbying for bill and keep arrangements.

The interim mutual compensation rates set by the ICC are not believed to be conducive to residential competition. This is because Ameritech charges approximately \$.05 per call (unlimited time), so for a great many residential calls (any in excess of 7 to 10 minutes), the "interim" costs of call termination would likely exceed the total retail rate of the call. The failure of the ICC's interim rules to permit viable residential competition has been a key issue raised by TCG in its efforts to convince the ICC to initiate a permanent compensation rule.

MARYLAND

The Commission, as an interim measure, in Phase I of MFS' authorization case (Case No. 8584) prescribed the use of resold PBX trunks, with no reciprocal compensation. This equates to a cost of about 2.2 cents per minute. A hearing on longer term interconnection arrangements is underway in Phase II of Case No. 8584. A decision in Phase II on compensation and technical interconnection is expected by year end.

MASSACHUSETTS

The DPU is in the midst of an evidentiary hearing (BPU-94-185) on the interconnection issue, with a decision likely by April 1996.

MICHIGAN

The Michigan Commission, in response to a complaint by City Signal, has set an interim rate of 1.5 cents per minute if traffic is out of balance by 5% or more, with no time of day or tandem versus end office discounts. Hearings on a long term arrangements were to begin in late September and decision in January 1996.

NEW YORK

There are a variety of negotiated interconnection arrangements currently in use in New York while the Competition II proceeding (Case 94-C-0095) has been ongoing. The Commission recently proposed new rules in the Competition II proceeding that would use separate rates for tandem and end office interconnection, including both usage sensitive and flat rated options. Interim rates are to be filed in mid-October, subject to investigation and potential refund; the interim usage sensitive rates are .98 cents/minute for tandem and .74 cents/minute for end office. Prices for flat rated ports are forthcoming.

OREGON

Hearings and testimony have been completed on interconnection issues as part of the consolidated LEC applications of MFS, MCI, and Electric Lightwave Inc. Bill and keep has been advocated by the three applicants, and by TCG. US West seeks minutes of use and universal service rates that roughly equal intrastate switched access rates. A decision is expected by mid-October.

PENNSYLVANIA

The Administrative Law Judge hearing MFS' LEC authorization case (Case No. A-310203F002) recommended the use of bill and keep as an interim measure pending development of a satisfactory long term arrangement. The ALJ's decision now goes to the full Commission, where at a recent open meeting it was disclosed that the Commission is split on the interim compensation issue. Because the Commission was split, they directed MFS, TCG, and other new CLECs to negotiate with Bell Atlantic and report back. A final decision is likely before year end. With respect to long term compensation, that is to be taken up in a separate proceeding on universal service (Case Nos. I-009400035 and L-00950105). That proceeding is just beginning, and hearings on compensation are unlikely to occur earlier than April 1996.

TEXAS

The new Texas legislation provides that CLECs will use bill and keep for the first nine months of their operation. Longer term arrangements will be developed through proceedings to be held for that purpose. A rulemaking is beginning to deal with the longer term arrangements.

WASHINGTON STATE

The Washington Utilities and Transportation Commission is in the middle of an extended complaint proceeding brought by TCG and other carriers against US West for its refusal to negotiate fair interconnection rates. In the meantime, TCG and US West are making mutual deposits to be held in escrow and be settled once the Commission rules. All briefing and hearings in the case are over, and a decision from the WUTC is expected soon.